

SERVICE DATE – LATE RELEASE FEBRUARY 3, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. WCC-101

GOVERNMENT OF THE TERRITORY OF GUAM

v.

SEA-LAND SERVICE, INC., AMERICAN PRESIDENT LINES, LTD., AND MATSON  
NAVIGATION COMPANY, INC.

Decided: February 3, 2005

By complaint filed September 10, 1998, the Government of the Territory of Guam (Complainant) seeks: (1) the establishment of reasonable rates, rules, classifications and practices for all transportation by water (including the water portion of intermodal transportation) provided by Sea-Land Service, Inc. (now Horizon Lines, LLC), American President Lines, Ltd. (APL), and Matson Navigation Company, Inc. (collectively, defendants), in the domestic offshore trade to and from Guam; and (2) reparations and damages for all sums assessed and collected by defendants for that transportation.

In a decision served on January 6, 1999, the Board adopted a three-step process for resolving this matter. In Phase I, the Board addressed defendants' joint motion to dismiss the complaint, and in a decision served on November 15, 2001, the Board granted the defendants' motion to dismiss Complainant's discrimination claim (but denied the remainder of the motion) and dismissed APL as a defendant. In Phase II, the Board will address an appropriate methodology for assessing rate reasonableness. In Phase III, the Board will consider the merits of the complaint. This proceeding is currently in Phase II and all evidence in this Phase has been submitted.

This is a complex case of first impression, and therefore an oral argument was not scheduled until there was a full complement of the Board. In a decision served on October 19, 2004, the Board stated it would hold an oral argument on November 10, 2004, to address the appropriate rate reasonableness standard to be applied in this rate case. On October 26, 2004, Complainant, citing a new administration in Guam, the need for more time to prepare, and the possibility of pursuing settlement of the complaint case, filed a motion for an extension of time, until May 10, 2005, for oral argument. In a decision served on November 3, 2004, the Board moved the date of oral argument to February 10, 2005, to allow the new administration in Guam to become familiar with the many issues of this proceeding and to explore settlement options.

The Board has been unable to confirm that Complainant is ready to proceed with the oral argument scheduled for February 10, 2005, despite repeated attempts to reach Complainant's counsel by telephone. Accordingly, the scheduled oral argument will be canceled and this proceeding will be held in abeyance until the Board hears from Complainant. It should be noted that, when cases have been in abeyance for an extended period of time, the Board often issues show cause orders for why such cases should not be dismissed. See Kansas City Southern Railway Company — Construction and Operation Exemption — Geismar Industrial Area Near Gonzales and Sorrento, LA, Finance Docket No. 32530 (STB served Aug. 29, 2003).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The oral argument in this proceeding is canceled.
2. This proceeding will be held in abeyance.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary